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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,637	01/23/2002	Stephen L. Siegler	LAWR0021US	9426

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NEW YORK, NY 10022

EXAMINER

FLANDRO, RYAN M

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,637

Applicant(s)

SIEGLER ET AL.

Examiner

Ryan M Flandro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. In view of the Appeal Brief filed on 12/17/03, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below. To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Falcon (US 6,142,701).

a. Claim 1. Falcon specifically shows and discloses a pedestrian traffic control device **10** comprising a hollow, upright, one piece, post **12** having an open upper end **18** and a lower end **14**; at least one slot **20** in the post **12** between its ends **18,14**, the slot **20** being spaced from both ends **18,14** of the post **12**; a cassette **22** located within the post **12** and between its ends **18,14**, the cassette **22** incorporating a tape **30** wound on a spool **22**, the tape **30** being extendable from

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the cassette **22**, through the slot **20** in the post **12**, in a direction generally perpendicular to the axis of the post **12**; the lower edge of the tape **30**, when extended, being spaced from the upper end of the post **12** at least several inches (see figure 1), and means **14** (and the recess therein; see column 4 lines 40-43) for holding the cassette **22** within the post **12** (see figures 1 and 2; column 4 lines 20-65).

b. Claim 2. Falcon further shows and discloses that the post **12** and cassette **22** are both generally circular in cross-section, and the outer diameter of the cassette **22**, along its entire axial length, is smaller than the internal diameter of the post **12** (see figures 1 and 2). As to the recitations that the cassette **22** can be inserted into the open upper end of the post **12** and moved to its location between the ends of the post **12**, the Examiner notes that the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

c. Claim 3. Falcon further shows that the cassette **22** is held within the post at a position such that the lower edge of the tape **30**, when extended, is less than twenty-seven inches above the floor supporting the post **12** (see figures 1 and 2).

d. Claim 4. Falcon further shows and discloses means **14** (and the recess therein) for supporting the cassette **22** within the post **12** in the region of the slot **20** in the post **12** (see figures 1 and 2; column 4 lines 40-43).

4. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Donnet (FR 0287510 A).

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a. Claim 1. Donnet specifically shows (see figures 1 and 2) a hollow, upright, one piece, post **1** having an open upper end and a lower end; at least one slot in the post **1** between its ends, the slot being spaced from both ends of the post **1**; a cassette **10** located within the post **1** and between its ends, the cassette **10** incorporating a tape **5** wound on a spool **10**, the tape **5** being extendable from the cassette **10**, through the slot in the post **1**, in a direction generally perpendicular to the axis of the post **1**; the lower edge **4** of the tape **5**, when extended, being spaced from the upper end of the post **1** at least several inches (see figures 1 and 2), and means (see middle portion of post **1**) for holding the cassette **10** within the post **1** (see figures 1 and 2).

b. Claim 2. Donnet further shows that the post **1** and cassette **10** are both generally circular in cross-section, and the outer diameter of the cassette **10**, along its entire axial length, is smaller than the internal diameter of the post **1** (see figures 1 and 2). As to the recitations that the cassette **10** can be inserted into the open upper end of the post **1** and moved to its location between the ends of the post **1**, the Examiner notes that the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

c. Claim 3. Donnet further shows that the cassette **10** is held within the post at a position such that the lower edge **4** of the tape **5**, when extended, is less than twenty-seven inches above the floor supporting the post **1** (see figures 1 and 2).

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- d. Claim 4. Donnet further shows means (see middle portion of post 1) for supporting the cassette 10 within the post 1 in the region of the slot in the post 1 (see figures 1 and 2).
- e. Claim 5. Donnet further shows that said support means (see middle portion of post 1) includes a tube within the post 1 having an upper end in the region of the lower end of the slot in the post 1, the cassette 10 being seated upon the upper end of the tube (see figure 2).

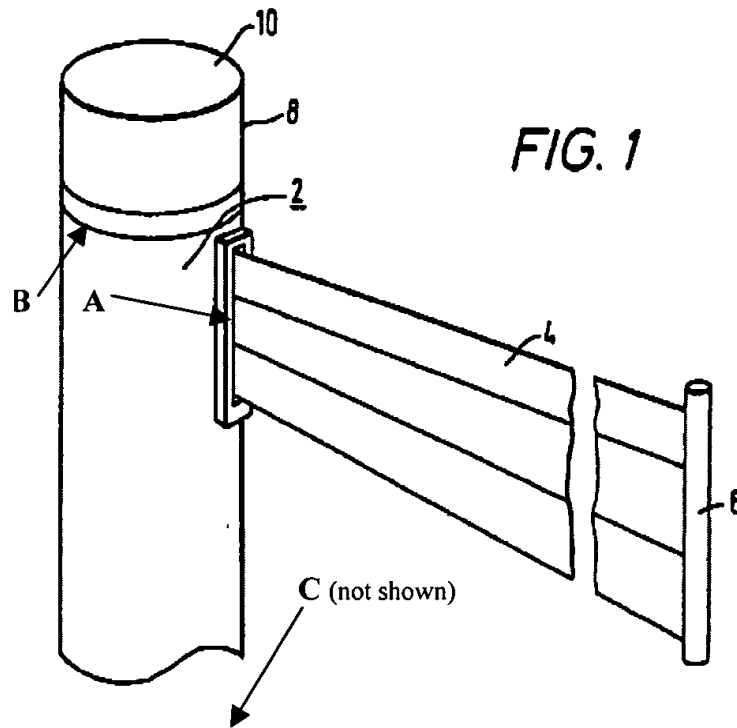
Claim Rejections - 35 USC § 103

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1, 2, 4, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reading et al (GB 2247095 A) (Reading).

- a. Claim 1. Reading shows and discloses a pedestrian traffic control device comprising a hollow, upright, one piece, post 2 having an open upper end B and a lower end C; at least one slot A in the post 2 between its ends B,C, the slot A

being spaced from both ends B,C of the post 2; a cassette located within the post 2 (see page 7 lines 5-10) and between its ends B,C, the cassette incorporating a tape 4 wound on a spool (see page 7 lines 5-11), the tape 4 being extendable from the cassette (see page 7 lines 10-14), through the slot A in the post 2, in a direction generally perpendicular to the axis of the post 2; the lower edge of the tape 4, when extended, being spaced from the upper end of the post 2 (see annotated figure 1 below), and means (page 7 lines 5-10) for holding the cassette within the post 2 (see annotated figure 1 below). Reading does not explicitly show or disclose the lower edge of the tape 4, when extended, being spaced from the upper end of the post 2 *at least several inches*. It is, however, within the scope of Reading's invention to make the lower edge of the tape 4 spaced at least several inches from the upper end B of the post 2. Depending upon the width of the tape 4 and, in turn, the length of the slot A along the post 2, Reading would meet this limitation. In any event, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (CCPA 1955). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to arrange the lower portion of the tape of Reading, when extended, being spaced from the upper end of the post at least several inches since this is within the scope of Reading's disclosure and well within the ordinary skill of one in the art.



b. Claim 2. Reading further shows the post 12 and cassette are both generally circular in cross-section, and the outer diameter of the cassette 22, along its entire axial length, is smaller than the internal diameter of the post 12 (see annotated figure 1 above and figure 2). As to the recitations that the cassette 22 can be inserted into the open upper end of the post 12 and moved to its location between the ends of the post 12, Reading meets these limitations but the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

c. Claim 4. Reading further discloses means for supporting the cassette within the post 2 in the region of the slot in the post 1 (see page 7 lines 5-10).

d. Claim 7. Reading, as applied above, also shows a pedestrian traffic control device, the device 10 including a hollow post 2 having an open upper end B and a

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slot A between and spaced from the post 2 ends B,C, the lower edge of the slot A being spaced from the upper end of the post 2 at least several inches, and a cassette incorporating a spool (not shown but see page 7 lines 5-10) on which a tape 4 is completely wound, the free end of the tape 4 being exposed, the method including the steps of inserting the cassette into the open end of the post 2, maneuvering the cassette along the length of the post 2 until the free end of the tape 4 is accessible through the slot A in the post 2; pulling the free end of the tape 4 through the slot A; and attaching a finger pull 6 to the free end of the tape 4 exposed outside the post 2, the pull 6 being sized large enough so that the free end of the tape 4, with pull 6 attached, cannot be retracted into the post 2 through the slot A (see annotated figure 1 above; pages 7-8).

e. Claim 8. Reading lastly discloses that the tape-carrying spool is spring biased (see page 7 lines 8-11) in a direction tending to wind the tape 4 on the spool, so that pulling the free end of the tape 4 through the post slot A adds tension to the spring (see annotated figure 1 above; pages 7-8).

7. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reading, as applied above, in view of Applicant's admission at page 1 of the specification.

a. Claim 3. Reading discloses all of the limitations recited in claim 3 except for the lower edge of the tape, when extended, being less than twenty-seven (27) inches above the floor supporting the post. It would have been obvious, however, to one having ordinary skill in the art at the time the invention was made to move

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the cassette of Reading to another position wherein the lower edge of the tape is less than 27 inches above the floor since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70 (CCPA 1950) (holding that claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device). Additionally, the twenty-seven inch ceiling on the position of the lower edge of the tape on such barriers is mandated by Federal Law as pointed out by Applicant in the instant specification (see page 1). Therefore, positioning the tape at 27 inches above the floor would have been obvious to one having ordinary skill in the art at the time the invention was made since this amounts to mere rearranging of the parts of the device to meet standards set forth by Federal Law.

b. Claim 6. Reading discloses all of the limitations recited in claim 6 except for the pedestrian control device explicitly having no tape-holding cassette occupying the upper end of the post. It would have been obvious, however, to one having ordinary skill in the art at the time the invention was made to move the cassette of Reading to another position wherein the lower edge of the tape is less than 27 inches above the floor since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70 (CCPA 1950) (holding that claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation

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of the device). Additionally, as pointed out by Applicant in the instant specification (see page 1), Federal Law mandates a twenty-seven inch ceiling on the position of the lower edge of the tape on such barriers. Therefore, positioning the tape at 27 inches above the floor would have been obvious to one having ordinary skill in the art at the time the invention was made since this amounts to mere rearranging of the parts of the device to meet standards set forth by Federal Law.

Conclusion

8. Again, in view of the Appeal Brief filed on 12/17/03, PROSECUTION has been REOPENED. New grounds of rejection have been set forth above. To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to queue management devices having a cassette within the post:

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U.S. Patent Publication 2003/0111657 A1 to Green

U.S. Patent 6,682,055 to Tomlinson et al.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan M Flandro whose telephone number is (703) 305-6952. The examiner can normally be reached on 8:30am - 5:30pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H Browne can be reached on (703) 308-1159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RMF



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